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Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KENNETH M. STERN,

Petitioner,

v.

EUGENE E. SIEGEL, RICHARD MONTES, MICHAEL NASH, COUNTY OF LOS ANGELES, HANS BERG,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

KENNETH M. STERN
LAW OFFICES KENNETH M. STERN
5850 Canoga Avenue, Fourth Floor
Woodland Hills, Ca. 91367
(818) 716-1101

In Propria Persona

COPY

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QUESTIONS PRESENTED

1. Is an attorney who does not coerce an [innocent] client into making a [false] admission he abused his daughter protected, by the United States Constitution, against judicial officers' retaliation?

2. When a judicial officer commands an attorney to enter into an unlawful conspiracy to deprive client of the right to a fair trial, and the attorney fails and refuses to join such conspiracy, does the United States Constitution protect the attorney against judicial officers' retaliation?

3. Is an attorney who continues to vigorously defend a client [falsely] accused of abusing his daughter, after being commanded by a judicial officer to obtain the client's [false] admission he abused his daughter, protected by the United States Constitution against retaliation by judicial officers'?

4. When there is an agreement an attorney, who is on a panel of court appointed attorneys, may remain upon such for as long as he wants, does the United States Constitution protect the attorney from being terminated, from the panel, without good cause?

5. If there is fundamental violation of the United States Constitution, must one be class member to be protected by 42 U.S.C. 1985 (2)and (3).

6. When a government unit is involved in litigation with, and responsible for providing appointed counsel to, indigents, may the government retain counsel paid at a much higher rate than counsel appointed to represent the indigent, without violating the United States Constitution?

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Kenneth M. Stern petitions for Writ of Certiorari to Supreme Court of the United States to review Memorandum of United States Court of Appeals for Ninth Circuit affirming District Court's ruling attorney petitioner had no rights to (1) be a vigorous advocate for his clients,[1] (2) refuse to enter into an unlawful conspiracy against his client, or, (3) be paid commensurate with that paid counsel appointed to represent the county.

I. OPINION BELOW

September 21, 1999 Court of Appeals, Ninth Circuit issued Memorandum finding petitioner had no constitutional rights violated. It is attached as Appendix D?.

II. JURISDICTIONAL STATEMENT.

Jurisdiction existed in District Court, by 28 U.S.C. 1331, as complaint alleged causes of action pursuant to 42 U.S.C. 1983, 1985. Court of Appeals for Ninth Circuit had jurisdiction, by 28 U.S.C 1291, 1294 as appeal from United States District Court, Central District of California. This court has jurisdiction by 28 U.S.C. 1254.

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[1] Memorandum is ambiguous as to whether there is no First Amendment right or there is a right, which was not violated. Memorandum, without stating there are such rights, or what are, merely states rights are circumscribed. It might appear Ninth Circuit holds latter; as, it refers to some purported facts. However, District Court ruling against petitioner was upon summary judgment; the standard being whether there was triable fact issue, rather than, after trial; with a substantial evidence standard. There was, at minimum, triable issues of fact. Thus, the decision is attorneys have no First Amendment rights to advocate for clients.

Notice of Appeal filed November 26, 1997. (E.O.R. p. 104.) District Court's Judgment entered October 27, 1997. (E.O.R. pp. 52-54, 303.) United States Court of Appeal, Ninth Circuit issued Memorandum, September 21, 1999. Petition for Rehearing and Suggestion for Hearing En Banc, denied March 24, 2000.

III. CONSTITUTION AND STATUTES.

The following are set forth verbatim in Appendix A, United States Constitution, Article I section 10, First Amendment, Fourteenth Amendment, 42 U.S.C. 1983 and 1985, Cal. Welfare and Institutions Code section 317.5.

IV. STATEMENT OF THE CASE.

A. Procedural History. District Court dismissed case against Berg upon theory no claim was stated as to him. Petitioner's partial summary judgment, upon ground evidence established liability as a matter of law, was denied. Government respondents' motion for summary judgment was granted upon theory attorneys have no constitutional advocacy rights or to refuse to engage in unlawful conspiracy against client. Notice of Appeal timely filed November 26, 1997. (E.O.R. 1550.)

B. Factual Summary. Petitioner was on panel of dependency court appointed attorneys, for 15 months, in Referee Siegel's court. Siegel appointed petitioner to about 76 cases, before terminating him from panel for not coercing client falsely charged with abusing daughter into [falsely] admitting he abused daughter.

Yackey, D.C.F.S. attorney working in Siegel's court, deposed petitioner was one of best panel attorneys, very

good trial lawyer and particularly good when representing children. She said appellant asserted clients' due process rights, not desired in dependency court. D.C.F.S. attorney Salazar deposed petitioner was (1) a far superior attorney to other panel members in Siegel's court, (2) one of best attorneys in dependency system, (3) a very good trial attorney, and, (4) particularly good when representing children. Petitioner could not have skills, observed by Salazar, and been incompetent to represent clients in dependency court, when petitioner removed from panel.

Trial commenced wherein petitioner represented said client. During trial, at end of D.C.F.S.' case, petitioner moved to dismiss; as, D.C.F.S. did not prove case. Siegel refused to dismiss.[2]

In 1/6/95 recess Siegel's old friend, Berg, delivered threat to petitioner; if client did not admit uncharged abuse, called parental conflict, petitioner would be terminated from panel. Siegel and Berg had ex parte communication before threat, discussing its delivery. Berg was told by petitioner he did not feel settlement was in client's interest; and, would not sell him out to stay on panel.

Chambers conference ensued wherein Siegel told petitioner, despite petitioner's saying he did not feel settlement was in client's interest, he was to obtain client's admission to uncharged parental conflict theory. Siegel called said client "dead meat", upon the charge, despite (1) client had not been charged, and (2) had no chance, to (a) confront or cross-examine witnesses, (b) present evidence, or, (c) testify. Siegel commanded petitioner to obtain no

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[2] Facts as to dependency trial summarized in Argument.

contest plea, saying there was no point in going forward with trial; as, (1) Siegel could find against client on molest charge, and, (2) parental conflict charge would be sustained.

Next trial date, 1/12/95, mother pleaded no contest to parental conflict, giving court jurisdiction over minor. Client did not accept plea bargain. Petitioner told by Berg and Siegel to continue defending against molest charge.[3]

Next and last trial date, 1/19/95, petitioner again moved to dismiss molestation charge, which again Siegel refused. At end of trial Siegel found petitioner's client did not molest daughter; but, found against client on parental conflict charge.[4] Inconsistently Siegel deposed father was reasonable, normal father. Siegel admitted the reason he wanted the father to plead no contest was unrelated to whether abuse occurred.[5]

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[3] This is shown by dependency court trial transcript. Yet in discovery herein Siegel false claims petitioner told, on 1/6, to stop defending molest charge.

[4] Judge Tucker granted rehearing; as, there was no evidence to sustain charge. Rehearing removed case from Siegel. D.C.F.S. admitted client did not abuse daughter, dismissing case against him. Case ended with complete exoneration and three more weeks visitation per year, with daughter, than when case started. This result flies in face of so called poor judgment referenced by Siegel and Memorandum.

[5] As explained later, even reasons claimed by Siegel were falsehoods. Petitioner can prove true reason was Siegel feared if he decided case in mannner in which D.C.F.S. did not approve, he might lose his expected promotion to Commissioner. Siegel knew he was disliked by the D.C.F.S. supervisor for Siegel's court. He was concerned said supervisor would cause a blanket

Day after trial ended, Siegel told petitioner he was being removed from panel; as, he did not have "client control" to get him to plead no contest. After pause Siegel said, "Oh, and for filing motions."[6] Siegel said he would not, and did not, remove petitioner from other appointed cases. Petitioner was told by Siegel he would help petitioner get back on panel, in another court, if he resigned; but, would have him blacklisted if he did not. Petitioner did not resign, but was terminated.

Siegel admitted he terminated petitioner from panel; as, he (1) did not obtain no contest plea, and, (2) continued to defend client.[7]

Whitewash investigation, by supervisors, Montes and Nash, revealed Siegel's extreme abuse, warranting termination.[8] Instead, he was promoted to Commissioner.[9]

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affidavit of prejudice against Siegel, which would reflect adversely upon him. That might cause negate his promotion. If father pleaded no contest, Siegel would not have to decide the case, thereby, removing the chance a decision D.C.F.S. did not like would squelch is promotion.

[6] Memorandum incorrectly says petitioner says a reason he was terminated was for filing motions. Such was comment by Siegel, which petitioner does not contend was true. Even so, there was no comment motions were improper or inadequate. It was petitioner's job to file motions, if appropriate.

[7] These are what Memorandum references when it says Siegel felt petitioner did not have proper judgment. Such was a pretext. As noted client was completely exonerated and given extra visitation, due to petitioner's efforts.

[8] Siegel was abusive to children he was to protect; and, was so abusive social workers were quitting rather than appear

before him:

"`Apoplectic,' `agitated,' `extremely angry' were terms that each used to describe Referee Siegel's reactions, both in chambers conferences and in open court. All made varying references to Siegel's `explosive temperament,' `short fuse' and language intended to humiliate. ... Oliver ... personally incurred Siegel's wrath on several occasions (as have many other lawyers), but that `the reaming that Stern got from Siegel (in chambers at the close of the case) was the worst I have ever seen'.

"Michelle Hart ... Referee Siegel's `tantrums' have a very negative effect on the DCFS staff, resulting in some turnover. It is also particularly hard on the children--especially the older ones, whom Siegel sometimes openly berates on the record because of their appearance (before realizing or being told that they are dependent children and not juvenile delinquents!) ... reported several specific instances of what she considered abusive behavior involving children.

"I am disturbed by the fact that the incidents reported and what apparently passes for `normal' procedure ... regarding the volatility and demeanor of Referee Siegel, the `rules' he enforces for attorneys and litigants and, most specially, the reports of his treatment of children--is reported and simply accepted by all (with the exception of Ms. Hart[*]) as part of the regular, everyday method of doing business in his courtroom. If this much stress, anger and confusion exists there, then we clearly have a problem which goes beyond Stern's complaint and which could become more aggravated in the future." (E.O.R. 535-37)[*and petitioner]

[9] Few months later two attorneys and assistant alleged sex harassment by Siegel. Abusing others is a reason why supervisorial liability exists.

Transcript in another case shows Siegel intimidated attorney into selling out client. In chambers conference that day, when an attorney pressed issue, Siegel warned better not be like petitioner.

V. REASONS FOR GRANTING THE WRIT.

Petitioner seeks, from this Court, a (1) fair and impartial review of his case, (2) determination attorneys have constitutional rights to (a) be vigorous advocates for clients, (b) not be required to sell out clients, and, (c) not be required to engage in an unlawful conspiracy against clients, and (3) a decision that petitioner is, at minimum, entitled to have jury[10] determine whether he was the victim of retaliation for utilization of said constitutional rights.

This Court promised, in Sacher v. U.S. 343 U.S. 1, 9 (1952), it:

"... will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of the advocate...."

Petitioner asks this Court to keep that promise.

This case is so within Court's bailiwick, need for Certiorari should be apparent, with little persuasion; but, petitioner does want to make some points.

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[10] In Reeves v. Sanderson Plumbing Products (99-536, Opinion filed 6/12/00) this Court recently held a jury should be allowed to decide whether a firing is pretextual. Such a determination is even more compelling herein; as, petitioner has never even been allowed to have a jury determine if his firing was pretextual.

Petitioner believes no published opinion addresses retaliation, by judicial officer, against attorney who refuses to sell out or enter into conspiracy against client.[11] [12]

This Court recently heard two cases wherein attorney rights were determined, by lower court, to have been violated. (Conn v. Gabbert, 119 S.Ct. 1292 (1999) and Mireles v. Waco 502 U.S. 9 (1991).) Issues herein are more important, going to core of justice in America. Right to counsel is more than right to have attorney present. Accused has right to be assisted by attorney taking measures to ensure fair trial. (Strickland v. Washington, 466 U.S. 668, 685 (1984).) Clients given pro forma lawyer are not accorded counsel to which they are entitled. (Powell v. Alabama, 287 U.S. 45, 58, (1932).) If petitioner has no right to properly represent clients, rather than selling them out, clients' right to counsel is meaningless.

As to 42 U.S.C. 1985 there is circuit split, interpreting Griffin v. Breckenridge, 403 U.S. 88 (1971). Azar v. Conley 456 F.2d 1382, 1386 fn.5 (6th Cir 1972) correctly held if there is fundamental constitutional violation, by government, petitioner need not be class member. Other Circuits, misconstruing Griffin, hold even if there is constitutional violation, person must be class member. (e.g. Thomas v. Roach 165 F.3d 137, 146 (2d Cir. 1999).)

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[11] This is not to say there is not law to negate qualified immunity.

[12] Walberg v. Israel 766 F.2d 1071 (7th Cir. 1985) is similar. Appointed attorney was assailed by judge for being vigorous advocate, commenting as to not appointing attorney to future cases.

This Court should decide if Equal Protection allows government to provide itself Cadillac representation while providing adversary indigents Ford Pinto representation. L.A. County pays its privately retained counsel about $300 per hour; providing indigents appointed counsel paid about $2.00 to $45.00 per hour.

VI. ARGUMENT.

A. SUMMARY JUDGMENT CONCERNING PANEL TERMINATION WAS IMPROPER.

Petitioner was terminated from panel for not joining an unlawful conspiracy against his client, failing to coerce innocent client into making false admission he abused daughter; but, continued to vigorously represent client. As long as retaliation was motivating or substantial factor, liability is established. (Village of Arlington Heights v. Metropolitan Housing Development Corp. 429 U.S. 252, 265-266 (1977).) Petitioner established prima facia case. Government never negated such. Petitioner, not government, was entitled to [partial] summary judgment.[13]

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[13] Memorandum's comment it did not matter whether petitioner was removed from panel; as, Siegel was not required to appoint petitioner to cases, is incorrect. Siegel could not accomplish indirectly what he was forbidden to do directly, terminating petitioner in retaliation against petitioner. (Young v. County of Marin (1987) 195 Cal.App.3d 863 citing Branti v. Finkel, 445 U.S. 507, 515 (1986) This is particularly true; as, Siegel did not select who would be appointed on any case. There was an appointment schedule. Siegel established a bizarre, conflict of interest laden situation, wherein D.C.F.S. selected which attorney would represent which party. Siegel rubber stamped the selection.

1. First Amendment. In Re McConnell 370 U.S. 230 (1962) ruled attorney had constitutional right to advocate client's position confirmed in In Re Little 404 U.S. 553 (1972), referencing McConnell.

"entitled to as much latitude in conducting his defense as we have held is enjoyed by counsel vigorously espousing a client's cause." (Id. at p. 556.)

Sacher v. U.S., supra, 343 U.S. 1, 9 (1952) held attorney has advocacy right to represent client.

> "right of counsel ... press his claim ... obtain the court's considered ruling. Full enjoyment of that right, with due allowance for the heat of controversy, will be protected ... when infringed
>
> "Court ... will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of the advocate...."

Weiss v. Burr 484 F.2d 973, 979-981 (9th Cir. 1973), citing Little, McConnell held attorney had First Amendment right to advocate for client. (Edmunds v. Chang 365 F.Supp. 941 rev'd other grounds 509 F.2d 39 (9th Cir. 1975).)

In Zal v. Steppe 968 F.2d 924 (9th Cir. 1992), contempt case, attorney conceded violating orders, to reach jury on issues ruled not a defense. Zal recognized attorneys have First Amendment rights to represent clients.

"`attorneys ... not lose their constitutional rights at the courthouse door." (Id. at p. 928.)

Zal noted attorneys have right to advocate for clients if not in contempt.

Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991) reversed attorney sanction for speaking to press.

Young v. County of Marin, supra, 195 Cal.App.3d 863[14] held attorney has First Amendment right to advocate for client.

"alleging that she was discharged ... merely for advocating the rights of her clients ... supporting her staff attorneys in discharging their legal and ethical obligations ...

"sufficiently alleged that she was terminated ... consequence of her reasonable exercise of her First Amendment rights..." (Id. at p. 857.)

Thornton v. Breland 441 So.2d 1348, 1350 (Miss. 1983), Kuchka v. Kile 634 F.Supp. 502, 511 (M.D.Pa. 1985), Gallagher v. Municipal Court (1948) 31 Cal.2d 784, 796, Chula v. Superior Court (1952) 109 Cal.App.2d 240, 239-240, Smith v. Superior Court (1968) 68 Cal.2d 547, 560 held attorneys have right to advocate for clients.[15]

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[14] Look to state interpretation of federal law. (Brown v. Meridian 356 F.2d 602, 605 (1966).)

[15] Memorandum's reference to Connick v. Myers, 461 U.S. 138, 146 (1983) is out of context, not applicable. Petitioner does not claim Siegel made mistake in judgment or was merely unreasonable. Siegel's claims were a pretext. Petitioner shows he was retaliation victim. Controlling law is (Bd. of Cty. Com'rs, Wabaunsee County, Ks. v. Umbehr, 518 U.S. 668 (1996) holding independent contractor has right to be free from

2. Liberty interest to not violate client's rights.[16] Petitioner has liberty right to use faculties lawfully, and act in best interest, not inconsistent with other's rights. (Ex Parte Drexel (1905) 147 Cal. 763, 764-766.)[17] Siegel violated petitioner's client's rights, prejudging parental conflict charge. If petitioner cooperated, coercing client to settle, he would have conspired to violate client's rights, exposing petitioner to criminal prosecution, disbarment and civil liability.

3. Property right. There was agreement petitioner could remain on panel for as long as he desired. If contract exists, there is property right which cannot be ended without due process. (Board of Regents v. Roth, 408 U.S. 564, 569-571 (1972), Lucero v. Hart 95 F.2d 1367, 1370 (9th Cir. 1990).)[18] This includes independent contractor's right not to be removed from appointive services. (Pritchett v. Alford 973 F.2d 307, 316 (4th Cir. 1992).)[19]

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termination as service provider, in retaliation for First Amendment exercise.

[16] Memorandum failed to address this liberty interest.

[17] State law determines scope. (Walker v. Sumner 14 F.3d 1415, 1419 (9th Cir. 1994).)

[18] Also right under contract clause. (United States Constitution Article I section 10.)

[19] Memorandum, ruling petitioner could not have contract to be on panel, but was terminable at will, erroneously relied upon Portman v. County of Santa Clara 995 F.2d 898 (9th Cir. 1990). Portman held employee statutorily terminable at will, could not have contract right. Petitioner was independent contractor, not employee. There are other contracts, with private counsel as independent contractors, to represent parties in dependency court.

4. Liberty/property right to represent client with no undue government interference.[20] Petitioner raised issue he had liberty/property right to represent client, without undue government interference, in manner in which he saw fit. L.W. Holt v. Commonwealth of Virginia, 381 U.S. 131, 138 (1965) held attorney had due process right to utter words representing client.

"punished ... nothing more than exercising the constitutional right of ... counsel ... to defend." (Ibid)

Petitioner had liberty/property interest by Fourteenth Amendment, to practice law, advise, represent clients in manner he saw fit, without undue government interference. (Wounded Knee Legal Defense/Offense Committee v. F.B.I. 507 F.2d 1281 (8th Cir. 1974); Roe v. Wade 410 U.S. 113 (1973); Greene v. McElroy 360 U.S. 474, 492 (1959).

Burns v National Credit Union Admin. 122 F.3d 1251, 1256 (9th Cir. 1997), noted McElroy dicta says right to practice one's profession is not limited to merely right to practice profession; but, there is a liberty/property interest protecting against government unduly interfering with particular employment.

Keker v. Procunier 398 F.Supp 756, 760-761 (1975) held the right to practice law, unfettered by undue government intrusion, is so protected.

> "The Fourteenth Amendment guarantees ... right to engage in any ... profession's of life ...

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[20] Memorandum addressed interest not to be excluded from profession, not this issue.

> both a `liberty' and property' right protected from state deprivation or undue interference.
> ...
>
> "Roe v. Wade, supra, and Doe v. Bolton, supra, clarified the right of physicians to assert their constitutional rights to practice medicine, including the right to advise and perform abortions without undue state interference.
>
> "... vindicates the right of the physicians to administer medical treatment according to his professional judgment up to the points where important state interests provide compelling justifications intervention.'...
>
> "no reason why attorneys should not be afforded the same scope of constitutional protection...
>
> Eighth Circuit... held that`with even stronger force ... lawyer has standing to challenge any act which interferes with his professional obligation to his client.'" (Id. at p. 760.)

Conn v. Gabbert, supra, 119 S.Ct. 1292 did not rule attorney may never have liberty or property right to practice law, as seen fit, without undue government interference. It merely holds, upon limited facts therein, there was no violation. It did not overrule Keker or cases cited therein. Justice Stevens wrote if, as herein, attorney's income, reputation, clientele, or professional qualifications were adversely affected, there could be violation of attorney's rights. (Id. at p. 1295.)

5. Equal protection. One retaliated against for protecting others' rights is equal rights violation victim. (Maynard v. San Jose 37 F.3d 1396, 1403-1404 (9th Cir. 1994).)

Stanley v. Illinois, 405 U.S. 645, 647-658 (1972) held parenthood a constitutional right, with due process, equal protection rights in dependency proceedings, including due process rights to present evidence, confront, cross-examine accusers. (Cleaver v. Wilcox 499 F.2d 940 (9th Cir. 1974).) When judicial system establishes procedures to be applied to all similarly situated, they have equal protection right to application of laws to them. (Truax v. Corrigan 257 U.S. 312 (1921); Myers v. Ylst 897 F.2d 417, 421 (9th Cir. 1990); Williams v. Oklahoma, 395 U.S. 458 (1969).)[21]

Petitioner was retaliated against for protecting client.

6. Equal protection. Punishing one for using constitutional right violates equal protection (Plyler v. Doe 457 U.S. 202, 216-217 (1982); herein speech, liberty, property.
7. Failure to obtain settlement.[22]

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[21] Memorandum wrongly holds involved conduct must pass only lowest scrutiny level. (Plyler v. Doe, 457 U.S. 202, 216-217 (1982) holds there is strict scrutiny if fundamental rights impinged. Siegel's attempt to coerce petitioner into depriving client of fair trial passes no scrutiny.

[22] Siegel claimed two primary reasons for terminating petitioner, one being because his client did not admit abusing his daughter and the other being petitioner's continued defense of his client. The two reasons establish the violation of petitioner's constitutional rights. Siegel's purported facts underlying the two reasons are conclusively pretextual. In Reeves v. Sanderson Plumbing Products (99-536, Opinion filed 6/12/00) this Court recently held showing a defendants lies are not only evidence of

Siegel eventually admitted one of two primary reasons he terminated petitioner, was client did not settle. (E.O.R. 425) Siegel originally concealed such, showing guilty consciousness. (E.O.R. 460-461, 1280-83.)

Siegel says he absolutely wanted father to plead no contest but admits such was not Siegel's business. (E.O.R. 1190, 1198-99, 1212) Siegel lied the reason he wanted father to plead no contest was mother refused visitation; if case dismissed father would not have visitation order. (E.O.R. 425)[23] Petitioner's summary judgment showed lie. Siegel knew mother agreed to visitation/order. Father did not have to plead no contest for visitation. Siegel could order it any time; even if, petition was not sustained as to father. (E.O.R. 1022-03, 1214-15)

Siegel, caught in lie, admitted knowing mother agreed to visitation order, father's visitation. (E.O.R. 1201) Siegel adopted new falsehood; to help father/child father had to plead no contest. (E.O.R. 765-767, 969, 1213-15, 1227-31) Siegel later admitted help to father/child could be given with no finding father abused daughter. (E.O.R. 1192-94, 1221-23, 1228-1229)

Siegel told D.C.F.S.'s attorney Oliver she did not have to get it to settle. (E.O.R. 400) Discriminatorily Siegel

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pretextual firing, but, circumstantial evidence of firing in violation of one's rights. Not only should Siegel's summary judgment have not been granted; but, petitioner's partial summary judgment should have been granted. Petitioner established a prima facia case. Siegel never shifted the burden of proof back to petitioner.

[23] If dismissed would revert to family law visitation order.

admits being adamant about father settling and firing petitioner for not obtaining settlement. (E.O.R. 1200)

Siegel said he did not take petitioner off cases, as 1) did not want to humiliate him[24] 2) did not feel had right[25] 3) would unfairly affect, even dictate case outcome. (E.O.R. 1262-66)[26]

8. Melli. Petitioner's cross-exam of pediatrician, who reported suspected sex-abuse to D.C.F.S., was second of two "primary" reasons Siegel claims were reasons he terminated

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[24] Report shows Siegel tried to humiliate petitioner; Siegel admits statement to insult petitioner.(125 E.O.R.1253-1254)

[25] Siegel did not bother to determine if he could remove appellant from existing cases. (125 E.O.R.1259-1260) If Siegel believed petitioner incompetent, mandated to remove petitioner from cases, particularly Rebecca D. wherein there was potential for contested disposition hearing. (Welfare & Institutions Code section 317.5.)

[26] Siegel's statement why taking petitioner off cases would do so is incredible. First analysis step is [false] claim petitioner incompetent not advising father to settle. Next step, consider Siegel's statement why removing petitioner from cases would unfairly affect and dictate outcome; if petitioner gave client settlement advise, new competent lawyer gave different advise, client might be confused. Final step is Siegel's [alleged] conclusion, better for clients to rely upon petitioner, alleged incompetent giving settlement advise in Rebecca D., for settlement advise, rather than, risk client being confused by new competent lawyer's advise. (E.O.R. 1262) It is area of alleged incompetence Siegel claims was primary reason for terminating petitioner, which at same time, was reason Siegel claims it better for petitioner to remain on cases!

petitioner. Transcripts unequivocally show Siegel's claim of petitioner's incompetence regarding such is a pretext. Petitioner met 4 goals as to Dr. Melli's testimony (1) showing "rectal bleeding" was bloody diarrhea, not from sex-abuse as mother claimed (2) limiting vagina redness described in report to only 20% of perihymen, no redness or trauma in labial tissue (3) redness could have many non-molest causes, and (4) opinion sex abuse occurred was very low.

At end of trial Siegel said Melli's testimony was not significant, showing Siegel's pretext Melli's testimony purportedly almost destroyed petitioner's client.

Before petitioner's partial summary judgment motion Siegel claimed, after settlement was tendered, petitioner almost destroyed client having nurse testify vagina red, swollen. (E.O.R. 425)[27] Motion showed claim false. Siegel changed story, with more provable lies, to sham allegation petitioner almost destroyed client by extensive exam of Melli, eliciting testimony it was possible[28] redness was caused by molest. (E.O.R. 967-968) It was prosecution who elicited this evidence.[29] Petitioner merely cross-examined prosecution evidence. The report, prosecution moved into evidence, stated:

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[27] It was mother, testifying for prosecution, who said vagina swollen. It was Dr. Melli, in report in evidence by prosecution, who said vagina red. No nurse testified.

[28] Burden of proof is preponderance of evidence, not possibilities. (In Re Lisa D. (1978) 81 Cal.App.3d 192, 196.

[29] In California prosecution is allowed to present case in chief through social study report. (In Re Malinda S. (1990) 51 Cal.3d 368.)

"DCS received the report from W-2 Melli ... were signs of sexual abuse ... Melli ... examined ... determined that Rebecca's hymen was still intact and her vaginal area was reddened. Although not conclusive, it would support the chance of foreign penetration..." (110 E.O.R. 901-903)

Petitioner's cross-exam focused upon fact of non-specific condition, many causes unrelated to molest. Petitioner noted Dr. Hager ruled out sex abuse.

After petitioner filed summary judgment motion, Siegel declared in opposition, when Melli testified molestation charge already decided in father's favor.[30]

When petitioner asked Melli if there were conditions, other than molest, that could have cause child's condition, counsel objected. Siegel deposed reason they objected was they decided petitioner's client was innocent, did not want finding against him. (E.O.R. 1203)[31] Truth is when petitioner tried to elicit exculpatory evidence, counsel objected, wanting Siegel to find father molested child. Melli said condition could have many non sex-abuse causes. "The list goes on and on and on."

Siegel's understood, from petitioner's cross-exam, Melli believed suspicion of sex abuse very low, no physical

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[30] Evidence shows this untrue. Dr. Melli testified 1/5. On 1/6 petitioner moved for non-suit to dismiss molest charge. Siegel refused. On 1/12, Siegel and Berg both told petitioner he should continue defending molest charge. On 1/19 petitioner again moved to dismiss molest charge. Siegel refused.

[31] Siegel admits not for one attorney to tell another how to represent client. (125 E.O.R. 1190-92, 1206-07)

findings strongly pointing to molest. Redness so trivial to Siegel he did not remember it during trial. (E.O.R. 886-889) Petitioner tried to introduce document showing Melli said suspicion of sex-abuse very low. (E.O.R. 886-889, 905) Siegel would not allow, saying such opinion was -in evidence; cumulative, irrelevant. Were Melli's testimony harmful to father, document was highly relevant with introduction required. Siegel's view of Melli's very low suspicion of sex abuse, elicited by petitioner, does not support juror believing Siegel's falsity Melli almost destroyed father. Siegel's concluding remarks attached no negative weight, to defense, in Melli's testimony.

9. Bloody diarrhea. Siegel falsely says petitioner harmed client having nurse testify child had bleeding rectum, possibly caused by molest. (E.O.R. 694, 968) Feb. 1994 mother told therapist child had rectal bleeding from sex abuse. It was bloody diarrhea from E. Coli. (E.O.R. 845-46, 906-07) When petitioner proved not rectal bleeding, Siegel said issue did not have much impact, contradicting false claim. (E.O.R. 862)

Petitioner elicited, on mother's cross-exam, claim she was told by doctor condition was rectal bleeding possibly from sex abuse. Petitioner showed claim false; as, Melli said not rectal bleeding, but, bloody diarrhea from bacteria, not sex abuse, impeaching mother's plan to frame father. (E.O.R. 855-62) Siegel admitted no nurse testified; but, twice contradictorily, states nurse testified to rectal bleeding potentially caused by sex-abuse, under petitioner's exam. (E.O.R. 694, 776, 968)

10. Timing petitioner told to stop defending molest charge. As petitioner's summary judgment exposed Siegel's lies, he had to change story as to when he supposedly told petitioner to stop defending sex-molest charge. In dependency trial

closing remarks Siegel said he decided after Matthies testified would find molest did not occur. (Jan. 5) In supplemental interrogatory answer it was after D.C.F.S rested case, on day settlement tendered (Jan. 6), petitioner allegedly being told such in chambers conference where settlement discussed. (Jan 6)[32] Siegel claimed petitioner almost destroyed client by calling "nurse", after Jan. 6, who said child had red, swollen vagina. (E.O.R. 425)

No nurse testified. Melli's testimony limiting reddening noted in report to 20% perihymenal redness was before petitioner was allegedly told, on Jan. 6, molest issue was won by father.[33] Upon uncovering Siegel's falsehood, as to timing of nurse/Melli's testimony, he had to change timing to make decision molest charge would not be sustained, with petitioner being told such, coming before Melli testified; so, it would appear alleged near destroying evidence came after sex-molest count was decided in father's favor.

So, Siegel falsely advances time, when he allegedly made decision molest would not be sustained, to immediately after child's testimony. (E.O.R. 765, 1289-90) Child was first witness. Siegel said at dependency trial, after child's testimony, he **had not** decided molest charge.

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[32] Petitioner was told, by Siegel, to get client to admit no contest charge; as, Siegel could still find against father on molest charge. Was Jan. 19/3:45 p.m. conference when Siegel 1st said would not sustain molest, told appellant to stop defending. (122 E.O.R. 1015-16) Siegel admits petitioner said, in said conference, as he twice moved to dismiss, which was denied, he had to continue defending. (125 E.O.R. 1218)

[33] Siegel eventually admitted there was no testimony, by anyone petitioner called, vagina swollen. (124 E.O.R. 696)

"FATHER WAS IN SERIOUS TROUBLE ... RUBBED HER IN A BAD WAY WHEN HER PANTIES WERE ... I THOUGHT THAT IT WAS SOMEWHAT QUESTIONABLE AT THAT TIME WHICH WAY THE CASE WAS GOING TO GO. ... SO I THINK THERE WAS SOME REAL QUESTION ABOUT HER TESTIMONY ... (E.O.R. 893)

He decided after Matthies testimony[34] molest would not be sustained.

"WHAT REALLY HURT COUNTY COUNSEL'S CASE AND MADE IT IMPOSSIBLE FOR ME TO FIND COUNT I TRUE ... MATTHIES TESTIMONY."(E.O.R. 894)[35]

After Melli and Matthies testified, petitioner twice moved to dismiss, upon non-suit, for prosecution's failure to prove case. Motion denials forced petitioner to continue defending; incompetent had he not.

Siegel claims after mother pleaded no contest petitioner went back to defending against molest; although, told it would not be sustained. (E.O.R. 969) Transcript

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[34] Petitioner called Matthies, after Melli, and elicited testimony she did not believe child molested; any comments child molested were product of coercion by mother!

[35] Petitioner was told by Matthies after child first said she had not been molested, Matthies used coercive interview techniques, designed to elicit false statement of abuse. Later in trial petitioner elicited from another social worker an admission she inadvertently coerced this child into making a clearly false allegation of abuse against father.

shows after said plea Berg specifically said, with Siegel agreeing, petitioner should continue defending against the molest charge! It was 1/19/95 Siegel said molest would not be sustained; stop defending.

Siegel claimed throughout trial, counsel told petitioner to stop defending molest charge; it would not be sustained. Not that it was their business; but, Siegel's trial end statement shows lie.

"I HAD ADVISED COUNSEL ... HAD WON IT, BUT **NO ONE** SEEMED TO BELIEVE THE COURT." (E.O.R. 894-895)

"No one" show Siegel's statement other counsel told petitioner he need not defend molest charge was false.

11. Montes and Nash liable. Supervisor liable if s/he fails to remedy subordinates wrongful acts. (Wright v. Smith 21 F.3d 496, 501-502 (2nd Cir. 1994); Larez v. City of Los Angeles 946 F.2d 630 (9th Cir. 1991). Montes and Nash were responsible for investigation. They had court clerk, who admitted not being competent to do investigation, do such. He admitted there was no investigation except as to whether Siegel yelled at petitioner, including no investigation as to whether Siegel violated petitioner and his clients constitutional rights.

Nash admits if investigation showed petitioner terminated in violation of constitutional rights, Nash should have found place for petitioner on panel. (E.O.R. 1178-79)

One who improperly trains another is liable. (Chew v. Gates 27 F.3d 1432, 1438 (9th Cir. 1994).) Nash improperly trained Siegel to keep panel attorneys in line by

abusing them. (E.O.R. 1004.8, 1176 1255)

12. County responsible. Pembauer v. Cincinnati, 475 U.S. 469, 480-493 (1986) ruled if government acts by authorized decision makers, officers, official bodies, officials is liable for their acts. Montes, Nash and Siegel were such.

13. Berg. Berg admits facts infer conspiracy.

"On its face these two facts [Siegel delivered on threat in manner Berg said would happen] infers some type of clandestine contact between Defendant BERG and Defendant SIEGEL..." (E.O.R. 111.1-111.3)

After Berg and Siegel had ex-parte talk that Berg should threaten petitioner with termination if he did not get client to admit abusing daughter, Berg delivered threat to petitioner. Berg was already aware, on morning petitioner was terminated, Siegel was terminating petitioner that morning. Berg removed petitioner from panel rotation, revising rotation. After petitioner gave notice of potential legal action, as to termination, petitioner was told by Berg he was spying on petitioner for Siegel, (2) Superior Court was having F.B.I. wiretap petitioner's telephones, and, (3) Superior Court was devising plan to come down on petitioner.

a. Aiding and Abetting. Liability may be as aider and abettor. (Halberstam v. Welch 705 F.2d 472, 477-486 (D.C. Cir 1983).)

b. Conspiracy. One is liable for conspiracy, inferable with no formal agreement, if (1) unity of purpose, (2) common design and understanding **or** (3) meeting of minds in unlawful arrangement. (American Tobacco v. U.S., 328 U.S.

781, 809 (1946).) Tacit understanding sufficient. (In Re Sunset Bay Associates 944 F.2d 1503, 1517 (9th Cir. 1991).) Black v. Sullivan (1975) 48 Cal.App.3d 557, 566-567[36] ruled need be no evidence conspirators met, agreed to unlawful act; implied agreement enough. (Carreon v. Baumann (1990) 747 F.Supp. 1290, 1291 (ND Ill. 1990).)

In Peterson v. Cruickshank (1956) 144 Cal.App.2d 148, 162-167 conspirators spoke but no direct evidence conspired. It was sufficient conspirator paid hospital bill knowing wrongful conduct.

Petitioner need merely show single plan, known by person to be held responsible. (Hampton v. Hanrahan, supra, 600 F.2d p. 621; Jackson v. Faber 834 F. Supp. 471, 477 (D.Me 1993).) Berg knew plan, was in agreement, willfully participated.

When one threatens wrongful acts will occur, carried out by others, is conspiracy circumstantial evidence. (Brever v. Rockwell Intern. Corp. 40 F.3d 1119, 1127-1128 (10th Cir. 1994).)

In Conklin v. Lovely 834 F.2d 543 (6th Cir. 1987) plaintiff had 2 bosses. She campaigned for losing D.A. candidate. D.A. told her, "paybacks are hell." Both bosses told her she had to be fired. Day before termination, 2 bosses met with D.A. to discuss petitioner's employment. Threat by D.A. and meeting with petitioner's employers sufficient to hold D.A. liable. (Id. at p. 540-550.) Facts herein are

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[36] State law determines allegations or proof sufficiency. (Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979) rev'd other grounds 446 U.S. 754.)

operatively same as Conklin. Weatherton v. G.F.L.A. (1969) 275 Cal.App.2d 168, 176-177 ruled delivering threat another would commit unlawful injury if victim did not engage in particular conduct enough for conspiracy.

Conspiracy acts may be lawful. (American Tobacco Co. v. U.S., supra, 328 U.S. at p. 809.) Acts must be looked at in totality, not isolating individual facts out of context. (Transgo v. Ajac Transmission Parts 768 F.2d 1001, 1020 (9th Cir. 1985)

Conspiracy may be concealing constitutional violations. (Harris v. Roderick 126 F.3d 1189, 1195-96 (9th Cir. 1997) Carreon v. Baumann, supra, 747 F.Supp. p. 1292.) Joining in cover up is conspiracy proof. (Cox v. Administrator U.S. Steel & Carnegie 17 F.3d 1386, 1411 (11th Cir. 1994), modified on Rehearing 30 F.3d 1347.)

c. Joint Action. If one acts jointly with official; liability. (Lugar v. Edmonson Oil, 457 U.S. 922, 941-942 (1982); Price v. State of Hawaii 939 F.2d 702, 708 (9th Cir. 1991)

d. Accomplice Liability. One who associates with wrongful venture, participates therein, seeks success is liable. (U.S. v. Parekh 926 F.2d. 402, 407 (5th Cir. 1991).)

B. 42 U.S.C. 1985 VIOLATION.

1. Class Exists. Dependency case parents are equal protection class. (Stanley v. Illinois, supra, 405 U.S. at pp. 651-652.) If one is damaged trying to protect class member, may sue. (Maynard v. San Jose, supra, 37 F.3d p. 1403.)

Fontroy v. Greater St. Louis AFL-CIO 478 F. Supp. 355 (1978) held 42 U.S.C. 1985(3) protects against

discrimination for political beliefs. See Life Ins. Co. of N.A. v. Reichardt 591 F.2d 499, 505 (9th Cir. 1979) citing Means v. Wilson 522 F.2d 833 (8th Cir. 1975), Cameron v. Brock 473 F.2d 608 (6th Cir. 1973), Gerritsen v. De La Madrid Hurtado 819 F.2d 1511, 1519 (9th Cir. 1987) Glasson v. Louisville 518 F.2d 899 (6th Cir. 1975). Petitioner alleged discrimination due to political belief attorneys should not sell out clients. (E.O.R. 23)

2. No need for class if government deprivation. Equal protection is guaranteed all persons similarly situated. (City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985).) Plyler v. Doe, supra, 457 U.S. pp. 216-217 held equal protection violation exists if fundamental rights impinged.

Griffin v. Breckenridge, supra, 403 U.S. 88 involved extending statute to private acts. Kush v. Rutldege, 460 U.S. 719 (1983) noted class animus limited to Griffin facts; private conspiracies. Distinction noted in Azar v. Conley 456 F.2d 1382, 1386 fn.5 (6th Cir 1972) with no class discrimination but, constitutional right violation. Azar noted 42 U.S.C. 1985(3) applies to persons or classes of persons. Griffin did not preclude action. Statute applies if person is discriminated against by violation, under color of law, of constitutional right. (Puente v. Sullivan 425 F.Supp. 249, 253 (WD Tex. 1977).) Private conduct requiring different analysis referenced in Bray v. Alexandria Women's Health Clinics, 113 S.Ct. 753, 764 (1993).)

C. APPELLANT ENTITLED TO EQUAL PAY.

Indigent has fundamental right not to be discriminated against concerning judicial proceedings. (Tate v. Short, 401 U.S. 395 (1971); Griffin v. Illinois, 351 U.S.

12, 19 (1956).)

It is equal protection violation to discriminate against indigents in supplying counsel. (Westberry v. State (1969) 254 A.2d 44, 45.) If government awards, unequally, benefits to some, not others similarly situated, equal protection is violated, requiring strict scrutiny. (Hooper v. Bernallillo County, 472 U.S. 612 (1985); Hobson v. Hansen (1967) 269 F.Supp. 401, 497.) Morales v. Turman 326 F.Supp 677, 679-680 (E.D.Tx. 1971) held if government gives itself favorable access to counsel not provided adverse parties for whom government is responsible to provide access, equal protection is denied; differences, due to indigence, affected fundamental access to defense in courts; strict scrutiny. Discrimination must be narrowly tailored to serve compelling state interest. (Plyler v. Doe, supra, 457 U.S. pp. 216-217.)

County knows attorneys appointed for indigents paid $45 rate, helping set rate. (E.O.R. 573-576) County is responsible for payment. Castro v. Los Angeles County Board of Supervisors (1991) 232 Cal.App.3d 1432 ruled County's duty to provide counsel to indigents. County knows it has 12 billion budget to retain $295 per hour counsel. It, knowing such and parents do not have such, deliberately uses wealth, others indigence, to its advantage. It is illegitimate, under any scrutiny, to discriminate against indigents in providing services. (Shapiro v. Thompson, 394 U.S. 618, 633-634 (1967); Memorial Hospital v. Maricopa, 415 U.S. 250, 263 (1974)) If acts do not pass rationality test, discriminatory intent need not exist. (Navarro v. Block 72 F.3d 712, 717 (9th Cir. 1996). There is no rational, compelling reason for county to give itself $295 per hour counsel, but, indigent, children, minorities cheapo counsel.

Barrows v. Jackson, 346 U.S. 249 (1953) ruled one,

not a minority, damaged by discrimination against a minority with whom s/he did business, may sue for equal protection violation. If one provides services to persons protected by equal protection, discriminated against as to services, service provider may sue. (Parks School of Business, Inc. v. Symington 51 F.3d 1480, 1487-88 (9th Cir. 1995)

VI. CONCLUSION.

One of Siegel's favorite sayings is an attorney can never win a dispute with a judicial officer. If ever there was a case where his maxim should be proven wrong, it is this case. Countless people have died, and many wars have been fought, to preserve the fairness and integrity of the United States judicial system. If an attorney can be the victim of retaliation for doing nothing more than the job for which he was licensed to do, being an ethical and vigorous advocate for a client, that fairness and integrity is extensively eroded. Thus, it is respectfully submitted the Petition for Writ or Certiorari be granted.

Dated: June 16, 2000

LAW OFFICES KENNETH M. STERN

BY: _____
KENNETH M. STERN, IN PROPRIA PERSONA.

APPENDIX A

FILED
JULY 31, 1996
CLERK U.S. DISTRICT
CENTRAL DISTRICT
OF CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KENNETH M. STERN	)CV 96-0306 LGB (Ex)
	)
Plaintiff,	)ORDER GRANTING
	)DEFENDANTS' MOTION
v.	)TO DISMISS
	)
EUGENE E. SIEGEL, et al.	)
	)
Defendants.	)
	)
	)
	)

. . .

a. Defendant Berg

Defendant Berg moves the Court to dismiss the first cause of action against him for failure to allege state action.

A primary element of a § 1983 claim is that defendant act under color of state law. See 42 U.S.C. § 1983; Adickes v. Kress & Co., 398 U.S. 144, 150 (1970). A private party

involved in a conspiracy with state official can be liable under § 1983. Id. at 152.

Here defendant Berg, like Plaintiff, is a court-appointed panel attorney. Berg was representing the child in this case which allegedly led to plaintiff's removal from the pane,. Plaintiff alleges that Berg acted under color of law by conspiring with defendant Siege, a government official, to coerce plaintiff into obtaining a no contest plea from his client or face termination from the panel. (Am. Compl. ¶¶ 19, 28, 29.) An allegation that Berg conspired with a state official is adequate to allege under color of state law, Tower v. Glover, 467 U.S. 914, 921 (1984), assuming plaintiff adequately alleges a conspiracy claim.

Although allegations in the complaint are to be taken as true, a court need not "necessarily assume the truth of legal conclusions merely because they are cause in the form of factual allegations." Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir.), cert. denied, 454 U.S. 1031 (1981). "A civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage." Vieux v. East Bay Regional Park Dist., 906 f.2D 1330, 1343 (9th Cir.) (internal citations omitted), cert. denied, 498 U.S. 967 (1990). To prove a conspiracy between private parties and the government under § 1983, an agreement or meeting of the minds must be shown. Fonda v. Gray, 707 F.2d 435, 438 (9th Cir. 1983); Woodrum v. Woodward County, Okla., 866 F.2d 1121, 1126 (9th Cir. 1989). Allegations of conspiracy must be supported by material facts, not merely conclusory statements. Woodrum, 866 F.2d at 1126; Haupt v. Dillard, 794 F.Supp. 1480, 1492

(D. Nev. 1992).

Plaintiff alleges the following facts regarding defendant Berg: (1) Berg "occasionally suggested plaintiff quit assignment to Department 426" (am. Compl. ¶23); (2) Berg told panel attorneys numerous times "about an incident wherein a criminal defense attorney was terminated from a panel " for filing a motion a judge did not like, (id. ¶ 23); (3) Berg conspired with Siege and Does 34 through 66 to determine that plaintiff should coerce his client into settling his case (id. ¶ 27); (4) Berg conspired with Siege to terminate plaintiff from the panel (id. ¶28); (5) Berg told plaintiff that "the time Siege would let plaintiff remain on the panel was shrinking" (id. ¶ 29); (6) Berg tendered a settlement offer (id.¶ 33); (7) Berg told plaintiff he was incompetent for not obtaining his client's agreement to the settlement and that Siege would remove plaintiff from the panel for such incompetence (id. ¶ 34); (8) Berg suggested the proposed settlement be discussed with Siege before plaintiff presented it to this client (id. ¶ 36); (9) Berg participated in two chambers conferences with plaintiff and Siege (id. ¶¶ 36, 42); (10) Berg concealed plaintiff's letter protesting his removal from the Antelope Valley Dependency Court Bar Association of which Berg was President (id. ¶ 62); (11) Berg issued a new case appointment schedule (id. ¶ 63); (12) Berg told plaintiff that he was spying on plaintiff for defendant Siegel and that the F.B.I. had wiretapped plaintiff's telephones (id. ¶ 75).

Facts 1, 2, and 7 do not indicate a meeting of the minds between Berg and Siege as they merely describe conduct by Berg. Similarly, facts 6, 8, 9, 11, involve conduct

properly engaged in by Berg to do his own job and do not implicate him in a conspiracy. Facts 3 and 4 are conclusory allegations insufficient to support a conspiracy claim. Fact 10 fails to indicate any agreement between Siege and Berg. Thus, only facts 5 and 12 remain to support the conspiracy claim -- that Berg allegedly told plaintiff that the time Siege would let him remain on the panel was shrinking and that he (Berg) was spying on plaintiff for Siege.

Plaintiff's first cause of action is a § 1983 claim for deprivation of rights caused by plaintiff s removal from the panel on January 20, 1995. Berg';s alleged threat that he was spying on plaintiff occurred on August 3, 1997. Clearly, the August 3, 1995, threat does not show an agreement to terminate plaintiff when the termination occurred seven months earlier. Plaintiff also alleged in the first cause of action that he has been damaged by the failure of defendants Montes and Nash to properly investigate his termination or reinstate him to the panel. These events also occurred prior to August 3, 1995, and do not indicate a conspiracy between Berg and Siege.

Berg's alleged comment that the time Siege would let him remain on the panel was shrinking could be interpreted to mean that Berg and Siege had discussed plaintiff's termination. The inference is a stretch and the Court finds that it is insufficient as the only factual allegation to support the conspiracy claim against defendant Berg.

. . .

Accordingly, defendant Berg's motion to dismiss is

GRANTED without prejudice as to the first cause of action.

/s/_____

APPENDIX B

FILED
CLERK U.S. DISTRICT
NOV - 4 1996
CENTRAL DISTRICT
OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KENNETH M. STERN	)CV 96-0306 LGB (Ex)
	)
Plaintiff,	)ORDER RE DEFENDANTS
	)MOTION TO DISMISS THE
v.	)THIRD AMENDED
	)COMPLAINT AND
EUGENE E. SIEGEL, in his individual capacity, et al.	)DEFENDANT BERG'S
	)MOTION TO DISMISS THE
	)THIRD AMENDED
Defendants.	)COMPLAINT
	)
	)
_____	)

b. Defendant Berg

Defendant Berg moves the Court to dismiss the first cause of action against him for failure to allege state action. For the reasons state in its August 2, 1996 Order, the Third Amended Complaint fails to state a cause of action against

Defendant Berg. Since this is plaintiff's third unsuccessful attempt to state a viable section 1983 claim against defendant Berg, the Court GRANTS Berg's motion without leave to amend.

. . . /s/ _____

. . .

APPENDIX C

FILED
CLERK U.S. DISTRICT
OCT. 20 1999
CENTRAL DISTRICT
OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KENNETH M. STERN	)CV 96-0306 LGB (Ex)
	)
Plaintiff,	)ORDER GRANTING
	)DEFENDANTS' MOTIONS
v.	)FOR SUMMARY
	)JUDGMENT; GRANTING
EUGENE E. SIEGEL, et al.	)IN PART AND DENYING
	)IN PART PLAINTIFF'S
Defendants.	)MOTION FOR SUMMARY
	)JUDGMENT; AND D D
	)DISMISSING REMAINING
	)CLAIMS
	)
_____	)

Nor has plaintiff provided applicable authority that

Stern's termination from the panel violated a "liberty interest" of his in any other way.

3. Supervisory Liability of Montes and Nash

Plaintiff has moved for summary adjudication respecting liability of Montes and Nash for his termination from the panel. Plaintiff seeks to hold defendants Montes and Nash liable for his termination from the panel on three distinct grounds: Nash's improper training of Siegel, Montes, and Nash's failure to reinstate Stern after Siegel terminated him; and their failure to conduct a thorough, legally substantive investigation of the allegations Stern made about Siegel (Stern Decl., Ex. P).

Stern has presented the following pieces of evidence connecting Nash to the termination.:

(1) Nash trained Siegel as a judicial officer by permitting Siegel to observe Nash on two or three occasions. (Stern Decl. In Opp. To Def.'s 2d MSJ, Ex. F, p 101, Ex. G., p. 179);

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12 In his Opp. to Def.'s 2d MDJ, Stern described himself as having a "liberty" not to be "put in [the] position" of"coercing plaintiff's client to accept the settlement," which Stern describes as "join[ing] defendant Siegel in an unlawful conspiracy to violate plaintiff's client's rights [which] would potentially have subjected plaintiff to criminal prosecution , disciplinary action by the federal and state bars of which plaintiff is a member and civil liability to the client." Pl.'s Opp. to 2d MSJ, p. 9-10.) Plaintiff has not raised a genuine issue of material fact as to such alleged "coercion" (which may be distinguished from alleged "retaliation ") nor cited any case law providing authority for finding such a purported liberty interest.

(2) Judge Klausner selected Nash to conduct an investigation into the matters raised in Stern's January 22, 1995 letter.

(3) Nash wrote to Stern on January 27, 1995, and assured him his complaint would be "investigated thoroughly." (Stern Decl., Ex. U.)

(4) As part of the investigation, on January 27, 1995, Nash wrote to Siegel and requested that he provide "a written response to [Stern's] complaint." (Stern Decl., Ex. W.)

(5) Nash wrote to Klausner on February 15, 1995, denying that he had any compromising relationship with Siegel and asserting his own ability to conduct an unbiased investigation. (Stern Decl., Ex. V.)

(6) When Martinez (the administrator-investigator) reported to Nash that Stern preferred to have a court reporter present for any such interview, Nash permitted Martinez to complete his report without interviewing Stern. (Stern Decl. Ex. X, p. 173-175.)

(7) On April 13, 1995, Nash sent a memo to Klausner reporting on the results of the investigation into Stern's complaint about Siegel, essentially endorsing Martinez's report. (Stern Decl., Ex. BB; Def.'s Issues, Ex. D, Nash Decl.) Nash's memo stated, "The interviews with percipient witnesses did not support Mr. Stern's complaint. However, those interviewed did suggest that there are occasional concerns with Referee Siegel's demeanor and temperament" and recommended peer counseling. (stern Decl., Ex. BB.)

Plaintiff has presented the following pieces of evidence connecting Montes to the termination:

(1) After a letter from Stern to Klausner on February 6,

1995, indicating that Nash would not conduct an objective investigation due to his friendhsip with Siegel (Stern Decl., Ex. S), Klausner brought Montes into the investigation along with Nash, and informed Stern by letter dated February 16, 1995, (Stern Decl., Ex T.)

(2) On June 13, 1995, Stern was rejected for the dependency court panel. (stern Decl., Ex DD.) On July 4, 1995, Stern sent a letter to Montes demanding reinstatement. (stern Decl., Ex. EE.) Montes refused, by letter dated August 2, 1995.

(3) By memorandum dated August 4, 1995, Montes informed Klausner that "it appears from other correspondebnce that {Stern] is in the process of initiating a lawsuit." (Stern Decl., Ex., GG>)

Supervisory liability under Hansen, 885 F.2d at 646 requires either personal involvement in the depreivation of a federally protected right, or sufficient causal connection between the supervisor's wrongul conduct and the deprivation. Inadequate training is a ground not of supervisorial, but of municipal,

/s/_____

APPENDIX D
NOT FOR PUBLICATION

FILED
SEP. 21 1999
CATHY A.
CATTERSON, CLERK

U.S COURT OF
APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KENNETH M. STERN	)No. 97-56778
	)
Plaintiff-Appellant,	)D.C. No. CV 96-0306-LGB
	)
v.	)MEMORANDUM
	)
EUGENE E. SIEGEL, et al.	)
	)
Defendants-Appellees	)
	)

Appeal from the United States District Court
for the Central District of California
Lourdes G. Baird, District Judge, Presiding

Argued and Submitted, August 4, 1999
Pasadena, California

Before: KOZINSKI, THOMAS, Circuit Judges, and

ILLSTON, District Judge[e]

I

To prevail on a procedural due process claim under 42 U.S.C. §1983, Appellant Kenneth M. Stern must establish a liberty or property interest protected by the Constitution, a deprivation of that interest by the government, and a lack of process. Portman v. County of Santa Clara, 995 F.2d 898, 904 (9th Cir. 1993). Stern argues that his removal from the panel interfered with his liberty interest in practicing law. To implicate this liberty interest, however, Stern must show that defndants' conduct precluded or, at the very least, substantially burdened him from engaging in his profession. Conn v. Gabbert, —U.S.---, 199 S.Ct. 1292, 1295-96 (1999). Stern makes no such showing and therefore his due process claim based on a liberty interest in practicing law fails.

Nor can Stern establish a property interest implicated in his removal from the panel. A government employee whose statutory terms of employment indicate no more than at-will employment does not possess a protected property interest in continued employment. Portman, 995 F.2d at 904-05. Even if we construe Stern's position at the dependency court as government employment, the state statute providing for appointment of counsel to represent indigents in dependency court, Cal. Welf. & Inst. Code §317, does not establish any guaranteed rights of continued employment or appointment to the dependency panel.

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[e] The Honorable Susan Y. Illston, United States District Judge for the Northern District of California, sitting by designation

Stern argues that he maintains a vested property interest in his position on the panel based on defendant Siegel's alleged oral promise that Stern "would be allowed to remain on the panel for as long as [Stern] liked." (IV Excerpts of Record ("EOR") 33-34). However, assuming arguendo that Siegel's promise created a right to indefinite placement on the panel, such a right does not equate with a right to employment since Stern presented no evidence that he was guaranteed appointment to any cases.

Stern also argues that his removal from the panel violated his rights to equal protection. Stern contends that among similarly situated dependency court attorneys, he was punished for asserting the rights of his dependency court clients in violation of his equal protection rights. However, neither Stern nor his dependency court clients belong to a suspect classification entitled to heightened scrutiny. Siegel's decision to remove Stern readily survives minimum scrutiny analysis, since Siegel's concern over Stern's competence as a trial attorney provides a rational basis for Stern's removal from the panel. See City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 441-42, 105 S.Ct,3249, 3254 (1985) (when heightened scrutiny is not appropriate the equal protection clause requires only rational means to serve legitimate ends).

II

Stern claims that his termination from the panel was in retaliation for his zealous advocacy on behalf of his client in violation of his First Amendment right to free speech. To establish a claim for retaliation, Stern must show that "the type of activity he engaged in was protected under the first

amendment and that [defendants] impermissibly infringed on his right to engage in the protected activity." Rizzo v. Dawson, 778 F.2d 527, 531 (9th Cir. 1985). Stern's retaliation claim fails for three reasons.

First, Stern's "zealous advocacy" falls into the category of attorney speech in the courtroom which is afforded only limited constitutional protection due to the special requirements of maintaining an orderly judicial proceeding. See Gentile v. State Bar of Nevada, 501 U.S. 1030, 1071, 111 S. Ct. 2720, 2742 (1991) ("It is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed."); see also Sacher v. United States, 343 U.S. 1, 8-9, 111 S.Ct. 2720, 2742 (1952); Zal v. Steppe, 968 F.2d 924, 927-28 (9th Cir. 1992).

Second, the evidence presented by both Stern and Siegel indicates that Stern was terminated not because of his legal advocacy but because of his legal judgment. Stern testified that Siegel terminated him for failing to convince his client to accept the settlement offer, and for "filing"motions." IV EOR 1017. According to Stern, Siegel told him that Siegel "could not wait for {Stern} to get up to speed with the other attorneys." Id. Consistent with Stern's version, Siegel stated that he terminated Stern from the panel because of Stern's lack of trial experience, poor judgment in the courtroom. Siegel's actions therefore did not implicate what limited free speech rights Stern possessed in the courtroom.

Finally, even if Siegel's decision to remove Stern from the panel was erroneous, Siegel's decision, as a government employee, is entitled to deference in these circumstances. See

Connick v. Myers, 461 U.S. 138, 146, 103 S.Ct 1684, 1690 (1983) ("perhaps the government employer's dismissal of the worker may not be fair, but ordinary dismissals from government service which violate no fixed tenure or applicable statute or regulation are not subject to judicial review even if the reasons for the dismissal are alleged to be mistaken or unreasonable.").

As for Stern's remaining claims, we have reviewed them and we AFFIRM for the reasons correctly stated by the district court.

AFFIRMED

/s/_____

APPENDIX E

NOT FOR PUBLICATION
UNITES STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

FILED
MARCH 24, 2000
CATHY A.
CATTERSON, CLERK
U.S. COURT OF
APPEALS

KENNETH M. STERN, Plaintiff-Appellant,	) NO. 97-56778
v.	) D.C.#CV-96-
	) 0306-LGB
EUGENE E. SIEGEL, et. al. Defendants-Appellees	)

BEFORE: KOZINSKI, THOMAS, Circuit Judges, and ILLSTON, District Judge[1]

The Petition for Rehearing is denied. The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote thereon. The suggestion for rehearing en banc is therefore rejected. See Fed. R. App. P. 35(b).

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[1] The Honorable Susan Y. Illston, United States District Judge for the Northern District of California, sitting by designation.

APPENDIX F

APPENDIX OF INVOLVED STATUTES

Federal Citations.

1. United States Constitution, Article I section 10:

"No state shall ... impair the obligations of contracts ... "

2. United States Constitutions First Amendment:

"Congress shall make no law ... abridging the freedom of speech ... "

3. United States Constitution, Fourteenth Amendment:

"Section 1... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. 42 U.S.C. 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State if Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other prop proceeding for redress. ...

5. 42 U.S.C. 1985:

"(2) ... or if two or more persons conspire for the purpose of

impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) If two or more persons in any State or Territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or equal privileges and immunities under the laws; ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasion by such injury or deprivation, against one or more of the conspirators."

California Citations.

6. Welfare and Institutions Code section 317.5:

(a) All parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel."